Supreme Court, U.S.
FILED

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OFFICE OF THE CLERK

No._____

IN THE

SUPREME COURT of the UNITED STATES

OCTOBER TERM, 1998

LYNDA MAE MARTINEZ (ARES),
PETITIONER

V.

GIL MARTINEZ,
RESPONDENT

On Petition for Writ of Certiorari to the Court of Civil Appeals of Alabama

PETITION FOR WRIT OF CERTIORARI

LYNDA MAE MARTINEZ (ARES)
ATTORNEY PRO SE
HARVEST, ALABAMA, 35949
(256) 830-4597

15pp

QUESTIONS PRESENTED

The Trial Court ignored evidence of harmful effects of secondary smoking and uncontested evidence of custodial father's unfitness and uncontested evidence of Petitioner's fitness.

Question: Does the discretionary power of the Trial Court insulate it from the strictures of the Equal Protection Clause?

Question: Does the requirements of due process of law under the 14th Amendment mandate a court decision that is in harmony with the uncontested evidence presented at the trial?

PARTIES TO THE PROCEEDINGS BELOW

The parties to the proceedings in the Court of Appeals were as follows:

Gil Martinez
Lynda Mae Martinez (Ares)

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IN THE
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LYNDA MAE MARTINEZ (ARES),
Petitioner,

V.

GIL MARTINEZ,
Respondent,

Petition for Writ of Certiorari to the Court of Civil Appeals of Alabama

---

PETITION FOR WRIT OF CERTIORARI

Petitioner Lynda Mae Martinez (Ares) respectfully prays that a Writ of Certiorari issue to review the judgment of the Court of Civil Appeals of Alabama in Lynda Mae Martinez (Ares) v. Gil Martinez, October, 1998.

OPINION BELOW

The decision of the highest state court to review the merits appears at Appendix A to the petition and it is unpublished.

The decision of the Supreme Court of Alabama appears at Appendix B to the petition and it is unpublished.

The order of the Circuit Court for Limestone County, Alabama entering final judgment is un-reported and is reproduced in Appendix C.

JURISDICTION

The judgment of the Court of Civil Appeals of Alabama was entered on 8 May 1998. A timely petition for rehearing was thereafter denied on June 26, 1998, and appears at Appendix D. The jurisdiction of this Court is invoked under 28 U.S.C. | 1257(a)

CONSTITUTIONAL PROVISION AND STATUE INVOLVED

The Fourteenth Amendment to the United States Constitution provides in pertinent part:

Nor shall any State deprive any person of life, liberty, or property, without due process of law, nor deny to any person equal protection of the laws.

STATEMENT OF THE CASE

Petitioner Lynda Mae Martinez Ares and Respondent Gil Martinez were divorced on July 1990. The Trial Court of Limestone County, Alabama awarded primary custody of James Ryan the parties child to the father. Petitioner has petitioned the State Courts of Alabama on numerous occasions for change of custody from the father to the mother. The Courts have ignored consistently credible and substantial and uncontradicted evidence. The abuse of judicial discretion of the courts of Alabama leads a reasonable person to conclude that Petitioner has been the subject of gender discrimination..

On 15 October, 1997 the Circuit Court of Limestone County, Alabama refused to change the custody of the minor, James Ryan, despite overwhelming evidence that the health of the child was in jeopardy because of the harmful effects of secondary smoking. Respondent father admitted in court that he smoked in the proximity of the minor child. At this hearing credible evidence showed that custodial father has abused the parties' child and another child by a former marriage and has been accused of embezzlement and was fired from his job in January 1997 and was arrested by the FBI for kidnaping. At this hearing credible evidence showed that Petitioner-Mother is a person of great respect and exemplary behavior in the community and can provide her child with intellectual and spiritual growth as well as stability. Evidence of record clearly showed the unfitness of father and fitness of mother.

REASON FOR GRANTING THE PETITION

The courts of our country are divided on the issue of the harmful effects of secondary smoking. Petitioner would have prevailed in the courts of the State of Washington. Judges in the State of Alabama would commit political suicide if they awarded custody on the basis of adverse effects of secondary smoking. The pristine characteristics of the Equal Protection Clause and Due Process of Law suffer if judges are allowed to make judicial decisions based on the relative influence of the tobacco industry in their respective jurisdictions..

The Circuit Court for Limestone County, Alabama noted in its order of 15 October 1997 that,

> When custody has previously been awarded to one parent, it will be modified only if there is a showing that a change of custody would materially promote the child's welfare.

The totality of the evidence shows convincingly that the order of the Court was in contravention and in conflict with its' own ruling. The totality of the evidence is compelling and shows that a change of custody would materially promote the child's welfare. Thus Petitioner was denied due process of law and the equal protection of the law.

The Smoke-Free Environment Act of 1997, sponsored by Senator Frank R. Lautenberg (D-NJ), Senator Dick Durbin (D-IL.), and Rep. Henry A. Waxman (D-CA) protects the public from the dangers of second-hand smoke. An April 1997 Harvard School of Public Health study determined that people regularly exposed to second-hand smoke are nearly twice as likely to develop heart disease. In addition second-hand smoke causes 3,000 lung cancer deaths a year. Second-hand smoke contains over 4,000 chemicals, 200 of which are poisons and 43 of which cause cancer. To combat the deadly effects of second-hand smoke on nonsmoker, The Smoke-Free Environment Act bans smoking inside buildings and bans smoking on all domestic and on all international flights originating from the U.S. no matter what the carrier. Currently, smoking is banned on domestic flights of 6 hours or less, pursuant to the 1987 and 1989 Lautenberg-Durbin laws.

The Courts of Alabama completely ignored the intention and the spirit of federal law and policy. The Courts of Alabama under the color of judicial discretion force James Ryan, the minor child of the parties, to live in a smoke infested environment.

CONCLUSION

For the foregoing reasons, this Court should grant this petition for Certiorari and should remand this case for reconsideration.

Respectfully submitted,

Lynda Mae Martinez Ares

LYNDA MAE MARTINEZ (ARES)
ATTORNEY PRO SE
HARVEST, ALABAMA, 35749
(256) 830-4597

10 November, 1998

APPENDIX A

STATE OF ALABAMA --- JUDICIAL DEPARTMENT
THE COURT OF CIVIL APPEALS
OCTOBER TERM, 1997-1998

2970543

Lynda Mae Martinez Ares v. Gil Martinez
Appeal from Limestone Circuit Court (DR-90-54-04)

THOMPSON, Judge

AFFIRMED, NO OPINION

See Rule 53(a) (1) and (A) (2) (A), Ala.R.App.P.; Ex parte McLendon, 455 So. 2d 863 (Ala.1984); Geisenhoff v.Geisenfoff, 693 So. 2d 489 (Ala. Civ. App. 1997); and Wesson v. Wesson, 507 So.2d534 (Ala. Civ. App. 1987).

Robertson, P.J., and Yates, Monroe, and Crawley, JJ.,concur.

John H. Wilkerson, Jr., Clerk of the Court of Civil Appeals of Alabama, do hereby certify the foregoing is a full true and correct copy of the instrument(s) herewith set out as same appears of record in said court.

Witness my hand this 8th day of May, 1998.

/s/ John H. Wilkerson, Jr.
Clerk, Court of Civil Appeals of Alabama

APPENDIX B

IN THE SUPREME COURT OF ALABAMA
October 16, 1998

1971773

Ex parte Lynda Mae Martinez Ares. PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CIVIL APPEALS (In re: Lynda Mae Martinez Ares v. Gil Martinez) (2970543) (Limestone Cir.Ct.No.: Dr-90-54.04)

CERTIFICATE OF JUDGMENT
Writ Denied

The above cause having been duly submitted, IT IS CONSIDERED AND ORDERED that the petition for writ of certiorari is denied.

NO OPINION.

MADDOX, J.- Hooper, C.J., and Shores, Kennedy, and See, JJ., concur.

I Robert G. Esdale, as Clerk of the Supreme Court of Alabama, do hereby certify that the foregoing is a full, true and correct copy of the instrument(s) herewith set out as same appear(s) of record in said court.

Witness my hand this 16th day of October, 1998

/s/ Robert G. Esdale
Clerk, Supreme Court of Alabama

APPENDIX C

IN THE CIRCUIT COURT FOR
LIMESTONE COUNTY, ALABAMA

GIL MARTINEZ,
PLAINTIFF,

CASE NO. DR. 90-54-04

VS

LYNDA MAE MARTINEZ ARES,
DEFENDANT,

ORDER

The above-styled matter came before the Court on the petition of the Plaintiff, Gil Martinez, for the award of child support to help him maintain and support the parties' minor child. The defendant, Lynda Mae Martinez Ares, denied the allegations of the petition and further counter-claimed for custody of the parties' minor child.

The parties appeared in open court with their respective attorneys and testimony was taken relative to all matters of the petitions as before the Court. The Court, after a full consideration of same, makes the following findings:

1. The above-named parties have been before this Court and in front of two separate circuit court judges in this jurisdiction on numerous occasions and the issue of custody has been appealed to and affirmed by the Alabama Court of Civil Appeals on three separate occasions, October of 1991, of 1992 and May of 1994. Further, the Court would note that when custody has previously been awarded to one parent, it

will be modified only when there is a showing that a change in custody would materially promote the child's welfare. Ex Parte McClendon, The non-custodial parent must show that material changes affecting the child's welfare have occurred since the most recent decree and that the positive good brought about by the modification would more than offset the inherently disruptive effect of uprooting the child from his or her present environment. ID.

In addition, the evidence of the change in circumstances must be so substantial that it discloses an obvious and overwhelming necessity for a change of custody. Whitfield v. Whitfield 570 So. 2d 700 (Ala.Civil Appeals 1990). The mother in the above-styled case fails to meet her burden of proof consistent with the applicable legal standard as defined herein. It is, therefore, **ORDERED, ADJUDGED And DECREED** by the Court that the Respondent's counter-claim for custody of the parties' minor child is hereby denied.

2. The Petitioner has brought before the Court significant change of circumstance since the rendering of the last decree to justify an ordering of child support consistent with Rule 32 of the Alabama Rules of Judicial Administration. It is, therefore, **ORDERED, ADJUDGED and DECREED** by the Court that the Respondent, Lynda Mae Martinez Ares is to immediately commence paying child support at the rate of $462.00 per month payable to the Limestone County Circuit Court Clerk. Said child support payments to commence November, 1997.

Dated this 15th day of October, 1997
/s/ James W. Woodroof Jr
Circuit Judge

APPENDIX D

June 26, 1998

THE COURT OF CIVIL APPEALS OF ALABAMA

RE; 2970543

Lynda Mae Martinez Ares v. Gil Martinez (Appeal from Limestone County Circuit Court: DR 90-54-04).

You are hereby notified that the following action was taken in the above cause by the Court of Civil Appeals:

Application for Rehearing Overruled. No opinion written on rehearing. 39 (k) Motion Denied.

/s/ John H. Wilkerson, Jr., Clerk
Court of Civil Appeals

Court of Civil Appeals
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